

## Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 IO-13 SY-10 USSS-00 SS-15 NSC-10

PA-03 PRS-01 USIA-15 CAB-09 CIAE-00 COME-00 DODE-00

EB-11 INR-10 NSAE-00 RSC-01 FAA-00 NEA-10 OMB-01 H-03

DOTE-00 /141 W

----- 033130

R 071255Z SEP 73

FM AMEMBASSY ROME

TO SECSTATE WASHDC 629

INFO AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMEMBASSY LONDON

AMCONSUL MONTREAL

USMISSION USUN

C O N F I D E N T I A L ROME 9280

E.O. 11652: GDS

TAGS: ICAO, ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE: STATE RESPONSIBILITY  
ISSUE

MONTREAL FOR US REP ICAO

PLS PASS: LITTELL: CAB; DRISCOLL/DOT; STEWART/FAA

REFS: (A) ROME 9116 (B) ROME 9124 (C) ROME 9146

1. SUMMARY: FOLLOWING PRESENTS USDEL'S VIEWS THAT  
STATE RESPONSIBILITY ISSUE EVEN MORE COMPLEX AND POTENTIALLY  
VOLATILE THAN INITIALLY ANTICIPATED. USDEL REQUESTS IT BE  
GIVEN FLEXIBILITY ASSIST OTHERS INTERESTED IN SIDE-  
TRACKING ISSUE IF IT APPEARS LIKELY TO DOMINATE OTHER  
AGENDA ITEMS AT CONFERENCE OR TO REVIVE FULL FLOWN ARAB-  
ISRAELI DEBATE. END SUMMARY.

2. IN RECENT DAYS AMB ROUNTREE AND USDEL MEMBERS  
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HAVE RECEIVED CLEAR INDICATION THAT ARAB DELS AND

FRANCOPHONE AFRICAN FELS PLACE GREAT IMPORTANCE IN AMENDING CHICAGO CONVENTION TO PERMIT APPLICATION OF SANCTIONS AGAINST STATE REPEATING ACTION SUCH AS THAT OF ISRAEL AUGUST 10 AGAINST LEBANESE AIRLINER. THESE DELS SEEM LIKELY TO INSIST THAT FORMULATION BE LIMITED TO POSITIVE STATE ACT AND EXCLUDE ANY MENTION OF INTERFERENCE WITH AIRCRAFT AS RESULT OF STATE OMISSIONS. WE WOULD ANTICIPATE SOME ARAB PRESENTATIONS ON THIS ISSUE WOULD BE POLEMICAL.

3. ARGUMENT CAN BE MADE THAT EXPLICIT PROHIBITION OF POSITIVE STATE ACTS NEED NOT BE BALANCED WITH COVERAGE OF STATE OMISSIONS SINCE MANY STATES OBLIGATED TO ACT BY HAGUE AND MONTREAL. LEBANESE DEL HAS ALREADY EXPRESSED THIS VIEW TO USDEL MEMBER. HOWEVER, IT IS MOST UNLIKELY ISRAELIS AND CERTAIN OTHER DELS COULD ACCEPT FORMULATION WITHOUT EXPLICIT BALANCING LANGUAGE. ISRAELI DEL HARAN HAS MADE THIS POINT TO USDEL HUFFMAN ON TWO OCCASIONS. ISSUE HAS ALREADY ARISEN IN WESTERN EUROPEAN ET AL. CAUCUS SEPT 6 WHEN FRG DEL SAID AMENDMENT TO CHICAGO CONVENTION PROPOSED BY UK/SWISS/FRANCE WOULD HAVE TO BE REVISED AS FOLLOWS:  
QTE SUBJECT TO PERTINENT RULES OF INTERNATIONAL LAW, EACH CONTRACTING STATE UNDERTAKES NOT TO INTERFERE BY FORCE OR THREAT OF FORCE WITH AN AIRCRAFT OF ANOTHER STATE OR TO TOLERATE SUCH INTERFERENCE. NOTHING IN THIS ARTICLE SHALL AUTHORIZE THE USE OR THE TOLERATION OF FORCE OR THREAT OF FORCE IN ANY CIRCUMSTANCES. UNQTE

4. BEYOND POTENTIAL THAT ISSUE WILL REVIVE MIDDLE EAST DEBATE, THERE IS VIRTUAL CERTAINTY ISSUE WILL ENGENDER ENDLESS DEFINITIONAL ARGUMENT. WE UNDERSTAND NORDIC STATES HAVE SOUGHT UNSUCCESSFULLY FOR LAST SEVERAL DAYS TO AGREE AMONG THEMSELVES ON ACCEPTABLE DEFINITION FOR STATE ACTS TO BE COVERED. NEARLY EVERY DELEGATE WHOSE VIEWS USDEL MEMBERS HAVE SOUGHT HAS HAD DIFFERENT VIEWS ON HOW STATE ACT SHOULD BE DEFINED.

5. BECAUSE OF COMPLEXITY OF ISSUE AND DESPITE SPECIFIC RECOMMENDATION ICAO COUNCIL RESOLUTION OF AUGUST 20, SOME  
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DELEGATIONS HAVE BEGUN TO SPEAK OUT AGAINST CONFERENCE/ ASSEMBLY CONSIDERATION OF STATE RESPONSIBILITY ISSUE. MOST NOTABLY, SOVDEL YEVSEYEV MADE APPARENTLY SPONTANEOUS SPEECH IN ASSEMBLY SEPT 5 TO EFFEC ISSUE FAR TOO COMPLEX FOR ICAO ASSEMBLY TO DEAL WITH IT CONSTRUCTIVELY. (THOUGH YEVSEYEV SUBSEQUENTLY INDICATED TO USDEL HUFFMAN HE WAS NOT ACTING UPON INSTRUCTIONS, USDEL DOUBTS SOVDEL WILL SUBSEQUENTLY REVERSE POSITION STATE BY YEVSEYEV.) THUS, THOUGH SOVIETS

VOTED FOR ICAO COUNCIL RESOLUTION, THEY APPEAR NOW TO HAVE DECIDED RECOMMENDATION ON STATE INTERFERENCE SHOULD NOT BE PURSUED HERE. THIS SAME VIEW WAS REFLECTED IN COMMENTS OF ITALIAN AND TURKISH DELS AT W.E. ET AL. CAUCUS.

6. FOLLOWING SOVIET INTERVENTION ISRAELI AMBASSADOR NAJAR INDICATED TO USDEL MEMBER THAT SOVIET SUGGESTION WOULD BE MOST PREFERABLE OUTCOME POSSIBLE. ISRAELI DEL HARAN CONFIRMED THIS POSITION SEPT 6 WITH USDEL HUFFMAN. HARAN SAID IF FORMULATION WAS NECESSARY, HE WOULD INSIST IT BE SPECIFICALLY BALANCED BUT THAT GOI WOULD PREFER AVOID ISSUE ENTIRELY IF POSSIBLE.

7. DEPT WILL RECALL THAT INITIAL APPROACH TO STATE ACTION ISSUE IN DRAFT US POSITION PAPER WAS BASED UPON PROSPECT STATE ACT FORMULATION MIGHT ATTRACT NEW SUPPORT FOR INDEPENDENT CONVENTION. IN LIGHT OF PROBLEMS DESCRIBED ABOVE, HOWEVER, USDEL NOW BELIEVES THAT IT WOULD BE UNWISE TO SUPPORT CONFERENCE CONSIDERATION OF THIS ISSUE. ACCORDINGLY, USDEL WOULD LIKE TO HAVE FLEXIBILITY TO SEEK HAVE MATTER REFERRED TO WORKING GROUP WHERE WE WOULD HOPE IT MIGHT BE TALKED TO DEATH. REQUEST INSTRUCTIONS TO THIS EFFECT. VOLPE

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